

AMENDED IN ASSEMBLY AUGUST 9, 2004

AMENDED IN ASSEMBLY JUNE 30, 2004

AMENDED IN ASSEMBLY JUNE 17, 2004

AMENDED IN SENATE APRIL 15, 2004

SENATE BILL

No. 1330

Introduced by Senator Murray

February 18, 2004

An act to add ~~Title 2.7 (commencing with Section 1634)~~ to Part 2 of ~~Division 3 of~~ *Section 1798.83.7* to the Civil Code, and to amend Section 629.51 of the Penal Code, relating to invasions of privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1330, as amended, Murray. Privacy: interception of communications.

Existing law generally prohibits a person, maliciously and without the consent of all parties to the communication, from intercepting or receiving a communication transmitted between specified communication devices, or from assisting in these acts. Existing law prohibits a person, without consent, from intercepting, receiving, and intentionally recording a communication transmitted between these communication devices, or from assisting in these acts. Further, existing law forbids the intentional and unconsented to eavesdropping on or recordation of a confidential communication, as specified. However, existing law allows specified law enforcement officials to apply for an order authorizing the interception of a wire, electronic pager, or electronic cellular telephone communication, as specified.

Existing law defines “electronic cellular telephone communication” for these purposes to mean any cellular or cordless radio communication.

This bill would make findings and declarations of the Legislature concerning interception of confidential communications. ~~¶~~ *The bill* would limit the term “electronic cellular telephone communication” for purposes of these provisions authorizing law enforcement interceptions of communication by court order. In particular, the bill would specify that the term does not include a confidential communication between parties conducted only in the presence of one another that is intercepted by a cellular or cordless radio telephone or similar device used with the sole purpose of eavesdropping upon or recording that type of communication.

This bill would also prohibit a provider of embedded automotive telematic services, *as defined*, from collecting, selling, sharing, transferring, or otherwise disclosing nonpublic personal information, as specified, without the explicit prior consent of the consumer *or subscriber* to whom the nonpublic personal information relates, offered in a clear and conspicuous manner, unless the *collection or* disclosure is necessary to effect, administer, or enforce an agreement with the consumer *or subscriber*. *Specified rights and remedies would apply to a violation thereof.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that existing
2 law forbids the interception, recordation, or transmission of any
3 confidential communication between natural persons made while
4 in each other’s presence where that interception, recordation, or
5 transmission is effected without consent using any machine,
6 instrument, or contrivance, except as expressly provided for in this
7 chapter. The Legislature intends the language which speaks to
8 interception of communication by “cellular or cordless radio
9 telephone or similar device” to be read broadly to include all
10 digital, analog, or other modes of transmission of communication,
11 as well as all media of transfer of communication.

12 ~~SEC. 2.—Title 2.7 (commencing with Section 1634) is added~~
13 ~~to Part 2 of Division 3 of the Civil Code, to read:~~
14

~~TITLE 2.7.—AUTOMOTIVE TELEMATIC DEVICES~~

~~1634.—~~

SEC. 2. Section 1798.83.7 is added to the Civil Code, to read:

1798.83.7. (a) A provider of embedded automotive telematic services shall not collect, sell, share, transfer, or otherwise disclose nonpublic personal information without the explicit prior consent of the consumer *or subscriber to the service* to whom the nonpublic personal information relates, offered in a clear and conspicuous manner, unless the *collection or* disclosure is necessary to effect, administer, or enforce an agreement with the consumer *or subscriber*. If the disclosure is made, the use of the nonpublic personal information shall be limited to that information necessary to effect, administer, or enforce the agreement.

(b) For the purposes of this section the following definitions shall apply:

(1) (A) “Nonpublic personal information” means personally identifiable information (1) provided by a consumer to a provider of embedded automotive telematic services, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by the provider of embedded automotive telematic services. Nonpublic personal information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any nonpublic personal information.

(B) Nonpublic personal information does not include publicly available information that is generally and readily made available to the general public from federal, state, or local government records, or disclosures that are required to be made by federal, state, or local law or court order, or obtained from a publicly available directory where the consumer has voluntarily consented to have the information publicly disseminated or listed, such as a name, address, or telephone number.

(2) “Personally identifiable information” means information that (A) a consumer provides to obtain a product or service, (B) about a consumer resulting from any transaction involving a product or service between the provider of embedded automotive telematic services and a consumer, or (C) that the provider of embedded automotive telematic services otherwise obtains about

1 a consumer in connection with providing a product or service to
2 that consumer.

3 (3) “Necessary to effect, administer, or enforce” means the
4 following:

5 (A) The disclosure is required, or is a usual, appropriate, or
6 acceptable method to carry out the transaction or the product or
7 service business of which the transaction is a part, and record or
8 service or maintain the consumer’s account in the ordinary course
9 of providing the embedded automotive telematic services, or to
10 administer or service benefits or claims relating to the transaction
11 or the product or service business of which it is a part.

12 (B) The disclosure is required or is one of the lawful or
13 appropriate methods to enforce the rights of the provider of
14 embedded automotive telematic services or of other persons
15 engaged in carrying out or providing the product or service.

16 (C) The disclosure is required, or is a usual, appropriate, or
17 acceptable method, in connection with the authorization,
18 settlement, billing, processing, clearing, transferring, reconciling,
19 or collection of amounts charged, debited, or otherwise paid using
20 a debit, credit or other payment card, check, or account number,
21 or by other payment means.

22 (D) The disclosure is otherwise required or specifically
23 permitted by federal or state law.

24 (4) ~~As used in this section, “embedded~~ “*Embedded*
25 automotive telematic device” means any system or device that is
26 integrated into a vehicle and combines wireless voice and data
27 communication systems in order to aurally provide a vehicle
28 occupant with information and services from a central service
29 center, and to provide the central service center with information
30 regarding the vehicle, including automatic airbag deployment
31 notification, vehicle tracking, personalized information, real-time
32 traffic data, roadside assistance, and entertainment.

33 SEC. 3. Section 629.51 of the Penal Code is amended to read:
34 629.51. For the purposes of this chapter, the following terms
35 have the following meanings:

36 (a) “Wire communication” means any aural transfer made in
37 whole or in part through the use of facilities for the transmission
38 of communications by the aid of wire, cable, or other like
39 connection between the point of origin and the point of reception
40 (including the use of a like connection in a switching station),

1 furnished or operated by any person engaged in providing or
2 operating these facilities for the transmission of communications,
3 and the term includes any electronic storage of these
4 communications.

5 (b) “Electronic pager communication” means any tone or
6 digital display or tone and voice pager communication.

7 (c) “Electronic cellular telephone communication” means any
8 cellular or cordless radio telephone communication, except that it
9 does not include a confidential communication between parties
10 conducted only in the presence of one another that is intercepted
11 by a cellular or cordless radio telephone or similar device used for
12 the sole purpose of eavesdropping upon or recording that type of
13 communication.

14 (d) “Aural transfer” means a transfer containing the human
15 voice at any point between and including the point of origin and
16 the point of reception.

17 *SEC. 4. Nothing in this act shall be construed to allow any*
18 *person or entity in the business of renting passenger vehicles to the*
19 *public that uses electronic surveillance technology, as defined in*
20 *Section 1936 of the Civil Code, in its rental vehicles to use, access,*
21 *obtain, or disclose information relating to the renter’s use of the*
22 *rental vehicle that was obtained using that technology, in*
23 *contravention with the changes made to Section 1936 of the Civil*
24 *Code by Assembly Bill 2840 of the 2003–04 Regular Session of the*
25 *Legislature.*

